

### **REMARKS**

Applicants reply to the Final Office Action mailed March 28, 2008 within three months. Claims 1-4, 10-14, 17-20, 22, and 24-29 are pending in the application and the Examiner rejects claims 1-4, 10-14, 17-20, 22, and 24-29. Applicants respectfully request reconsideration of this application.

Initially, Applicants thank the Examiner for the telephone interview conducted on May 29, 2008. The Examiner requested that this Reply outline: (1) that Zalewski et al U.S.PG Pub20040030601 is not a correct citation; (2) that Wankmueller, U.S. Patent No. 7,287,695 does not qualify as prior art; and (3) the aspects of the independent claims that the Examiner did not address in the first Office Action or the Final Office Action. Applicants address these points below. The Examiner acknowledged that due to the defects in the Final Office Action, the next Office Action should not be final.

The Examiner rejects claims 1-4, 10-14, 17-20, 22, and 24-29 under 35 U.S.C. 103(a) as being unpatentable over Zalewski et al., U.S. Patent No. 6,771,981 ("Zalewski") in view of Wankmueller, U.S. Patent No. 7,287,695 ("Wankmueller"). The Examiner also rejects claims 1-4, 10-14, 17-20, 22, and 24-29 as being unpatentable over "Zalewski et al U.S.PG Pub20040030601" (Office Action, page 3). Applicants respectfully submit, however, that the first named inventor in U.S. Patent Application Pub. No. 2004/0030601 is Pond and will therefore refer to this publication as "Pond".<sup>1</sup> Applicants continue to respectfully disagree with these rejections and are reiterating certain arguments made in the last Reply that were not addressed by the Examiner. Furthermore, Applicants do not concede that Zalewski and Pond are in fact prior art with respect to this application and Applicants reserve the option to antedate Zalewski and/or Pond.

With respect to Wankmueller, as acknowledged by the Examiner in the telephone interview, Wankmueller does not qualify as prior art because Applicants' priority date is earlier than the priority date of Wankmueller. Berardi et al., U.S. Patent No. 7,239,226 (Ser. No. 10/192,488; "Berardi"), of which the present application is a continuation-in-part, was filed on July 9, 2002. Berardi claims priority to a provisional application (Ser. No. 60/304,216) filed on July 10, 2001 ("the '216 Provisional"). Wankmueller was not filed until January 6, 2005.

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<sup>1</sup> Applicants note that the disclosure in Pond includes all of the disclosure in Zalewski. Pond adds some disclosure to Zalewski, e.g., paragraphs [0084]-[0085] and [0124]-[0162].

Wankmuller is a continuation of Wankmueller, U.S. Patent No. 6,857,566 (“Wankmueller ‘566”) that was filed on November 25, 2002. Wankmueller ‘566 claims priority to a provisional application (Ser. No. 60/337,913) filed on December 6, 2001. Because the filing date of the ‘216 Provisional (July 10, 2001) was prior to the filing date of the 60/337,913 provisional (December 6, 2001) to which Wankmueller claims priority, Wankmueller therefore does not qualify as prior art with respect to the present application. Applicants therefore traverse all rejections based on Wankmueller and respectfully request that the Examiner withdraw all rejections based on Wankmueller.

Furthermore, because the Examiner acknowledges that Zalewski and Pond do not disclose “Applicant’s newly added [elements] of reading a decryption key associated with the RF ID code, and using the decryption key to decrypt the encrypted authentication code” (Final Office Action at page 3), Applicants respectfully request allowance of all pending claims.

Applicants note that the Examiner did not address many of the elements of the independent claims and the dependent claims in the Final Office Action. MPEP § 707.07(e) states that “[a] plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all the claims in the group.” Because the Examiner has not addressed all the elements of Applicants’ independent and dependent claims, the Examiner has inappropriately grouped the claims “in a common rejection.” The rejection cannot be equally applicable to all the claims in the application because the rejection only addresses certain elements and does not address all the elements existing in the claims. Applicants therefore respectfully request that the Examiner provide specific rejections for all the claims. Further, Applicants respectfully submit that it was inappropriate to make this office action final because of this inappropriate rejection and the inappropriate use of Wankmueller discussed above. **Applicants therefore respectfully request that the Examiner withdraw the finality of the action.**

In Applicants’ previous reply, filed January 25, 2008, Applicants submitted amendments to the claims. The Examiner, however, did not address these amendments in the Final Office Action. In fact, the Examiner rejected Applicants’ previous version of the independent claims (see Final Office Action, pages 2-3, and 4). Because the Examiner failed to address the pending claims, the Examiner did not address, among other things, the following elements of the independent claims:

- “verifying the authentication transmission” (claim 1)
- “a transaction application located in an RF module” (claim 12)
- “wherein the transaction application comprises a first mobile device authentication routine, a second mobile device authentication routine, and an account data transmission routine configured to be responsive to the second mobile device authentication routine” (claim 12)
- “an RF transponder configured to transmit the secondary identification code” (claim 12)
- “transmitting the secondary end-user authentication identification via an RF transponder” (claim 17)

Because the Examiner does not assert that Zalewski and/or Pond, alone or in combination, disclose or contemplate at least the above claimed elements, Applicants respectfully submit that independent claims 1, 12, and 17 are allowable over Zalewski and Pond. If the Examiner maintains these rejections, Applicants’ respectfully request that the Examiner point to the specific portions of the cited references that allegedly disclose the elements.

Furthermore, with the exception of dependent claim 2 (that Applicants address below), the Examiner does not assert that any of the cited references, alone or in combination, disclose or contemplate any of the elements in any of the dependent claims. For example, the Examiner does not assert that the cited references, alone or in combination, disclose or contemplate the following elements of the dependent claims:

- “receiving the mobile device account data via a mobile device universal serial bus” (claim 3)
- “receiving the user account data after the authenticating of the secondary end-user authentication identification” (claim 18)
- “wherein the secondary authentication user interface comprises a biometric authentication user interface” (claim 24)
- “at a radio frequency (RF) reader” (claim 1), “wherein the using of the decryption key to decrypt the encrypted authentication code comprises using the unique decryption key to decrypt the encrypted authentication code” (claim 29).

Because the Examiner does not assert that Zalewski and/or Pond, alone or in combination, disclose or contemplate the elements in dependent claims 3-4, 10-11, 13-14, 18-20,

22, and 24-29, Applicants respectfully submit that dependent claims 3-4, 10-11, 13-14, 18-20, 22, and 24-29 are allowable over Zalewski and Pond. If the Examiner maintains these rejections, Applicants respectfully request that the Examiner point to the specific portions of the cited references that allegedly disclose the elements.

As stated in the previous Reply, Applicants respectfully submit that Zalewski and Pond, alone or in combination, do not disclose or contemplate the elements of the pending claims. For example, independent claim 1 recites “A method for facilitating a mobile device payment transaction *at a Radio Frequency (RF) reader*, comprising . . . receiving a mobile device secondary identification” (emphasis added). Similarly, independent claim 12 recites “A mobile payment device, comprising . . . a secondary authentication interface configured to receive a secondary identification code [and] an account data *RF transponder configured to transmit* the secondary identification code” (emphasis added). Also, independent claim 17 recites “A computer-readable storage medium containing a set of instructions for a general purpose computer configured for. . . receiving a secondary end-user authentication identification via a mobile device user interface [and] transmitting the secondary end-user authentication *via an RF transponder*” (emphasis added).

As Applicants argued in the previous Reply (the Examiner failed to address this argument in the Final Office Action), none of the cited references disclose receiving a secondary end-user authentication *via an RF transponder*. Pond, for example, requires, “[o]nce the payment server 1407 authenticates that the customer has a valid, active account, it then needs to authenticate the customer’s action. This can be done *one of two ways*—through a voice call utilizing an Integrated Voice Response (IVR) system *or* through mobile messaging” (¶ [0147]; emphasis added). Pond distinguishes structure used for initial customer identification via “proximity reader 1403” from the structure used for this secondary authentication “through a voice call utilizing an [IVR] system or through mobile messaging” (see ¶¶ [0144], [0147]). Additionally, both Zalewski and Pond disclose that, after initial authentication, “[c]over 100 then responds to provide reader/interrogator with information such as electronic identification mobile station phone number and the like. The reader/interrogator may also send a code to a register of MCU instructing phone to go to *passive mode*. Since information regarding [the] user’s mobile station phone number may be provided to the reader/interrogator, [the] user’s mobile station may receive a Short Message Service (SMS) message at some point after RFID validation *when*

*customer is safely away from the fueling area*” (Zalewski, Col. 11, Lines 49-58; Pond ¶ [0083]; emphasis added).

Therefore, neither Zalewski nor Pond disclose or contemplate the elements of independent claims 1, 12 and 17 that the Examiner asserts they disclose, at least because they do not disclose Applicants’ “*RF transponder* configured to transmit the secondary identification code” (emphasis added). For at least this reason, Applicants respectfully submit that independent claims 1, 12, and 17 are allowable over the cited references.

As noted above, the Examiner concedes that “Zalewski fails to explicitly disclose Applicant’s newly added [elements] of reading a decryption key associated with the RF ID code, and using the decryption key to decrypt the encrypted authentication code” (Final Office Action at page 3). For at least this reason and in light of the arguments set forth above, Applicants respectfully submit that independent claims 1, 12, and 17 are allowable over the cited references.

Dependent claims 2-4, 10-11, 13-14, 18-20, 22, and 24-29 variously depend from independent claims 1, 12, and 17, so dependent claims 2-4, 10-11, 13-14, 18-20, 22, and 24-29 are allowable over the cited references for the reasons set forth above, in addition to their own unique features.


The claims of the present application are different and possibly broader than the claims pursued in the parent applications. To the extent any prior amendments or characterizations of the scope of any claim or referenced art could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicants hereby rescind and retract such disclaimer. Accordingly, the references previously construed in the parent applications may need to be revisited.

In view of the above remarks, Applicants respectfully submit that all pending claims properly set forth that which Applicants regard as their invention and are allowable over the cited references. Accordingly, Applicants respectfully request allowance of the pending claims.

The Examiner is invited to telephone the undersigned at the Examiner's convenience, if that would help further prosecution of the subject application. The Commissioner is authorized to charge any fees due to Deposit Account No. 19-2814.

Respectfully submitted,

Dated: May 29, 2008

  
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